

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08	RUSTY BOSCHKEE,)	CASE NO.: C08-0152-RSL
)	
09	Petitioner,)	
)	
10	v.)	REPORT AND RECOMMENDATION
)	
11	ROBERT J. PALMQUIST,)	
)	
12	Respondent.)	
	_____)	

Petitioner is currently in custody at the Federal Detention Center at SeaTac, Washington (“FDC SeaTac”). He submits to this Court for review a petition for writ of habeas corpus under 28 U.S.C. § 2241 together with an application to proceed with this action *in forma pauperis*. He alleges that a policy governing visitors for pretrial detainees is unconstitutional.

A writ of habeas corpus may issue only upon a finding that a prisoner is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).

In *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), the Supreme Court explained that “the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” Here,

01 petitioner's assertions do not constitute an attack on the legality of his custody. Instead, petitioner
02 attacks the conditions of his current confinement. Such claims may be brought in an action under
03 *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), but are not cognizable
04 in an action brought under § 2241.

05 Accordingly, this Court recommends that petitioner's application for leave to proceed *in*
06 *forma pauperis* be denied and that this federal habeas action be dismissed with prejudice. A
07 proposed order accompanies this Report and Recommendation.

08 DATED this 25th day of February, 2008.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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